

EXHIBIT B

SUPERIOR COURT OF NEW JERSEY
 CHANCERY DIVISION - HUDSON COUNTY
 DOCKET NO. - F7827-10

DRA ASIA, LLC as CIVIL ACTION
 successor by assignment
 from FIRST AMERICAN DEPOSITION OF:
 INTERNATIONAL BANK,
 Plaintiffs, HELMER TORO

vs.

35 Real Estate Limited
 Partnership, Realholder
 Corporation, Garden
 Operations Limited
 Partnership, Garden
 Operations Realty
 Limited Partnership,
 Garden Operations
 Corporation, United
 States of America, State
 of New Jersey, DLC
 Services Corp., Robert
 Benjamin, et al.,
 Defendants.

COPY

vs.

FIRST AMERICAN
 INTERNATIONAL BANK,
 Counterclaim-
 Defendant

- - - - -
 T R A N S C R I P T of
 Stenographic notes of the proceedings in the
 above-entitled matter as taken before NANCY
 LEE CHURCHILL a Notary Public and Certified
 Court Reporter of New Jersey, License No.
 XI01140, at the offices of WINDELS, MARX,
 LANE & MITTENDORF, ESQUIRES, 120 Albany
 Street Plaza, New Brunswick, New Jersey, on
 Tuesday, March 15, 2011 commencing at 10:48
 in the forenoon.

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Q At 35 UPS Drive?

A Yes.

Q So, just we're all on the same page, you are the president and sole shareholder of the general partner corporation --

A Correct.

Q -- of the tenant at the 35 UPS Drive?

A Correct, correct.

Q And do you draw a salary as being president of that corporation?

A I'm being paid by the partnership.

Q By the Family Partnership?

A The family, yes.

Q Is it your testimony that you receive no income related to Garden Operation Corporation?

A Correct, yes.

Q And, sir, are you familiar with an entity known as 35 Real Estate Limited Partnership?

A Yes.

Q What is 35 Real Estate Limited Partnership?

A Owns the retail estate at 35 UPS
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1 Drive.

2 Q Does 35 Real Estate LP do anything
3 other than own the real estate?

4 A That's all it does.

5 Q The sole business of that entity is
6 just to own the real estate?

7 A Right, that's correct.

8 Q Would I be correct in saying that
9 the sole source of income for 35 Real Estate
10 LP would be the operations of the real
11 property itself at 35 UPS Drive?

12 A At the present time, yes, but there
13 was another tenant there, which went
14 bankrupt. It was Old Dutch Baking Company.
15 Approximately 25,000 square feet occupied.

16 Q Old Dutch?

17 A Yes.

18 Q How big is the property itself?

19 A 74, 75,000 square feet, plus or
20 minus.

21 Q And Old Dutch Bakery Company, that
went bankrupt?

23 A Yes.

24 Q And do you know when that went
25 bankrupt?

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1 A I don't have it in front of me.

2 MR. SLAMA: Mark this.

3 (Involuntary Petition Under Chapter 7
4 marked HT-1 for identification.)

5 Q Mr. Toro, you've been handed what's
6 been identified as Exhibit HT-1. Take a look
7 at that and let me know when your review is
8 completed.

9 A Okay.

10 Q And, sir, just some preliminary
11 questions. Jorge Delgado, do you know Jorge
12 Delgado?

13 A Yes.

14 Q Jorge Delgado was your attorney.
15 Correct?

16 A Yes, in-house attorney.

17 Q In-house attorney at what entity?

18 A For all the entities, you know,
19 First Toro, Sixth Toro, Garden Operations, 35
20 Real Estate.

21 Q Is it fair to say that you're in
22 charge of all those entities?

23 A Yes.

24 Q And at the time Mr. Delgado was the
25 in-house attorney for all those entities?

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1 A Yes.

2 Q And of course you authorized him to
3 assist you in filing the involuntary
4 bankruptcy against Old Dutch Baking company?

5 A I don't recall whether, who -- I
6 know Dave filed it.

7 Q Who is Dave?

8 A Old Dutch Baking Company filed
9 Chapter 11. I don't recall right now. I
10 don't remember. I don't remember how that
11 took place. I know eventually they did file
12 Chapter 11, I know they closed the place, but
13 the procedure how it goes, I don't remember.
14 I would have to, you know, check with him.

15 Q Okay. But let's focus in on what's
16 been marked for identification as HT-1.

17 A Okay.

18 Q Which I'll represent to you, sir,
19 we actually pulled off the electronic filing
20 system of the United States Bankruptcy Court
21 today.

22 A Okay.

23 Q And if I could turn your attention
24 specifically to Page 4, spilling into Page 5,
25 where it says petitioners and there's an

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of the company.

Q As we sit here today, do you have understanding, approximately, I'm not going to hold you to the dollar?

A Around \$3 million were loaned from the New York entities to the -- the 35 Real Estate, and Garden Operat -- both of them together, you know, loaned that money to it, because, you know, you had to pay the mortgage. So, there's no revenue coming in. Where's the money coming from?

Q So, those companies paid the mortgage?

A Correct, yes.

Q And they also put the improvements in the property?

A That's correct.

Q And, sir, those improvements that were put in the property, why were they necessary?

A To set up the equipment, because we moved the equipment from 46th Street over to New Jersey, to set it up.

Q And, just so I understand, what use was the property put to before you acquired

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1 it?

A I'm sorry?

Q What was the property used for before 2006? I know you said you had Old Dutch in there, but --

A Yes, but their -- they were in the muffin's business and the thing, it was totally different from my operation.

Q I understand.

A Totally different.

Q But besides Old Dutch, what else was going on at the property when you bought it? What other uses was the property put to?

A Only Old Dutch acquired a small space and that's why we had all the extra space, you know, it worked out for me and to have both of us there.

Q Okay. But maybe I'm not making myself clear.

A Okay.

Q You bought the property. Right? You obviously saw this property and you said this is good for my business. Right?

A Right.

Q What use was the property put to

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1 before such time as you acquired it, do you know? What did they use the property for?

A I'm sorry?

Q What did they use the property for before you bought it?

A Storage, the rest was storage and they only have a small bakery and the rest was just storage, you know.

Q You had to make all these improvements?

A That's correct, yes.

Q And you recollect the improvements cost about \$3 million?

A Oh, yes. No, no, no. \$3 million includes the mortgage payment, the labor, you know, the construction, you know, a combination of everything, approximately everything that money was loaned out.

Q Okay. And that is the money that was loaned out. My question to you is a little bit different. What do you estimate the improvements to the property to have been?

A Whatever it shows in the books and records.

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Q You don't have any independent knowledge of it?

A I'm sorry?

Q You don't have independent knowledge as to what that figure would be today?

A Whatever it reflects on the books and records of the company.

Q Now, sir, you also borrowed money from an entity called DLC?

A Yes.

Q And DLC was -- that borrowing was secured by a mortgage. Right?

A Correct.

Q And that was about \$700,000?

A Correct.

Q What was the purpose of the \$700,000 loan?

A The purpose of the \$700,000 loan?

Q Yes.

A That was to -- for them, that was used, that money was used to build the facility, for construction.

Q Did you get permission from FAIB, I'm using that as shorthand for First

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A Sure, sure, sure, right, right,

Q Did you get permission from FAIB to have a second mortgage placed on the property?

A Yes, yes, the 700,000, yes.

Q That was in writing?

A Yes.

Q You got permission from them in writing?

A Yes.

Q You have that writing with you here today?

A No.

Q And what about the equipment, where did you get your equipment from to install in the property?

A Where did I get the equipment? Some I bought at auction and some I moved it from 46th Street over to -- to New Jersey.

Q What type of equipment are we talking about?

A Bagel-making equipment.

Q Is that bolted into the property,
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1 how does that work?

A Some of it is bolted into the property, like the tunnel ovens, you know, and equipment, you know, plumbing equipment, refrigeration.

Q Was any of that financed with Mr. Benjamin or with DLC?

A He loaned me the money to be able to do the work.

Q Sir, did there come a point in time where you stopped paying the mortgage?

A There was, yes.

Q When was that?

A I don't recall.

Q Was it in 2009?

A Whatever the books and records show.

Q Well, do you review the books and records at any point in time?

A Huh?

Q Do you personally review the books and records at any point in time?

A From time to time I might review them, yes.

Q And who directs the payments that
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1 are made from the company? Who directs
2 payments that are made by the company?

A Myself.

Q Does anybody else have the authority to direct payments?

A No.

Q In 2011, did you direct any payments be made pursuant to the terms of the mortgage or the note?

A In 2011?

Q 2011?

A If I had the money in the bank, I would make the payments, yes.

Q Well, let's take it a different way, sir. You are aware that DRA Asia acquired the loan from First American International Bank. Right?

A Yes.

Q That's Mr. Stein's company, and he's here today?

A Yes.

Q Did you make any payments to Mr. Stein or his company in 2011, concerning mortgage --

A I don't recall.

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Q You don't recall whether you made any payments?

A I don't. Maybe, I don't -- I don't think so. I mean, I don't recall, you know, I mean, I don't think I did, no.

Q What about in 2010, did you make any payments to DRA Asia on account of the mortgage or the note?

A I don't think so.

Q And what about in 2010, did you make any payments to First American International Bank?

A In 2010?

Q Ten?

A I don't recall. I don't have the figures in front of me here.

Q And in 2009 you are just not sure. Right?

A Whatever the figures show, that's what I did.

Q Okay. Were any lease payments made by Garden Operation Realty Corp., I'm sorry, Garden Operation Realty Limited Partnership to 35 in 2011 concerning the rent?

A In 2011?

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I mean, what I'm using right now
operation? I would say half of it.

Q Okay.

A Half.

Q And is the other half in rentable
condition?

A Yes. I mean, as long as I get a
tenant, I cleaned it all out.

Q Have you come to any conclusions or
has anyone advised what the rental value of
the remaining 37,000 square feet would be?

A You know what, when I speak to the
real estate brokers, I ask them, he asks me
how much I could get for the rental, I says
as much as I could get, you know. Said,
look, there's lot of inventory out there, why
don't you just first show it to the people,
if they're interested in renting it, if they
want to, then let them present me with an
offer and then at that time we will discuss
it and make everybody aware of it, you know,
and look I got a tenant, he wants to rent
and, you know.

Q So, it's currently listed, is that
your testimony?

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A Yes, yes.

Q And is there any -- where is it
listed again, sir?

A I could get you the name of that
company.

Q Listed with a realty broker?

A Yeah, yeah, I get calls from all
over the place, yeah.

Q It's not with a broker, but with an
on-line service?

A It's -- one is with an on-line
service and another one is with the broker
who I originally bought the purchase,
purchased the property, that broker, she has
it, too, and I have another broker, as well,
Sheila Sachs is one from Team Investors, Team
Resources.

Q Okay.

A Is one. And she is trying to get
me a tenant and he shows it.

Q Is there any price listed?

A No, right now I have it available,
you know, I guess, you know make me an offer
and then I will see if it makes sense and
then I'll bring it back to the parties to be,

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1 and, look, you guys, whatever, whatever, you
2 know, whatever it is, it is, you know. I
3 mean, if it's a good tenant and if they're
4 willing to pay the price to start to lower my
5 rent down because I don't need the space. I
6 even told that to David Chin -- David Chin --
7 the person from First American Bank, I
8 originally told them that, that I want to
9 rent the space and I have it out there
10 looking for me. And he says good, you know,
11 just, you know, just what you need and the
12 rest rent it out, absolutely, you know,
13 otherwise turn it over to the bank.

Q Has any broker given you any
opinion as to the value of that rental space?

A Value of the rental space? I
gotten it from \$2 to \$3.

Q Per square foot?

A Per square foot, yeah, their main
content is parking. And, everybody wants
parking.

Q Have you performed any appraisals
of the property?

A When the bank did the appraisal.

Q In 2006?

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A Right, right, right.

Q Since then, have any appraisals
been done?

A I don't remember.

Q And has any broker -- have you
tried to sell the property?

A Yes.

Q And do you have it listed with
anyone for sale?

A I tell everybody, listen, if you
have anybody interested in buying it, you
know, make me an offer and we'll go from
there. But at that point in time I have got
nothing serious. They come in, they take a
look, they look around and then, you know,
they'll get back to me and they're looking at
other properties. So, nothing of concrete
has ever come down, where I would, you know.

Q Sir, you executed several
Certifications in this case, haven't you?

A What do you mean?

Q Well, certain documents?

A Yes, yes.

Q Okay. By way of an example?

A Sure, sure.

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